

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

EDWARD LEE GONZALES,

*Plaintiff,*

v.

PATRICK H. MCDONALD and  
ANTHONY GRANTHAM,

*Defendants.*

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CIVIL ACTION NO. 1:23-CV-227-MJT-CLS

**MEMORANDUM ORDER OVERRULING  
PLAINTIFF'S OBJECTIONS AND ADOPTING THE REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE [Dkt. 74]**

Pursuant to 28 U.S.C. § 636 and the Local Rules of Court for the Assignment of Duties to United States Magistrate Judges, the District Court referred this proceeding to the Honorable Christine L. Stetson to conduct all pretrial proceedings, to enter findings of fact and recommend disposition on case-dispositive matters, and to determine non-dispositive matters. *See* 28 U.S.C. § 636(b)(1); E.D. TEX. LOC. R. CV-72.

On January 12, 2024, Judge Stetson issued a Report and Recommendation [Dkt. 74] advising the Court to deny Plaintiff's Motion for Default Judgment [Dkt. 57] because (1) all properly served parties had filed responsive pleadings, and (2) even if a defendant was in default, Plaintiff has not followed the proper procedure. On February 5, 2024, Plaintiff filed a document [Dkt. 92] which purports to object to Judge Stetson's Report and Recommendation on Plaintiff's Motion for Default Judgment [Dkt. 74], Judge Stetson's order [Dkt. 72] denying Plaintiff's construed motion for recusal, and this Court's order adopting Judge Stetson's Report and Recommendation on City Defendant's Motion to Dismiss [Dkt. 73]. This document also appears

to mention Judge Stetson's show cause order [Dkt. 79] and attempts to relitigate this Court's severance and dismissal of Ms. Hile and Ms. Seeney from the current action.

This is an improper filing for several reasons. First and foremost, Plaintiff's document [Dkt. 92] is directed to the Court, but addresses numerous issues directed at both the Court and Judge Stetson in violation of the Local Rules. For example, the record does not reflect that Plaintiff has responded to Judge Stetson's show cause order [Dkt. 79] outside of a passing reference in this instant filing. Under the Local Rules, each pleading, motion, or response "must be filed as a separate document." E.D. TEX. LOC. R. CV-7(a). Second, these different issues require the application of different legal standards. For example, timely objections to a magistrate judge's Report and Recommendation trigger a *de novo* review, while late objections to a Report and Recommendation or a non-dispositive order merit a plain error review. Third, Plaintiff exceeds the page limits on filings set forth in the local rules which require objections to a Report and Recommendation be limited to eight pages, E.D. TEX. LOC. R. CV-72(c), and non-dispositive motions, such as Plaintiff's construed motion to reconsider severing Hile and Seeney, are limited to fifteen pages. E.D. TEX. LOC. R. CV-7(a)(2). Plaintiff is advised to review the Local Rules on this Court's Website, [www.txed.uscourts.gov](http://www.txed.uscourts.gov).

Although filed after the deadline for objections to Judge Stetson's Report and Recommendation on Plaintiff's Motion for Default Judgement, the Court will consider Plaintiff's filing as objections to Dkt. 74. The Court ORDERS that Plaintiff, to the extent he wishes to "object" to Dkt. 72 and Dkt. 73, to do so in separate and appropriate filings within seven (7) days of receipt of this order. The Court, furthermore, ORDERS Plaintiff respond to Judge Stetson's show cause order [Dkt. 79] within seven (7) days of receipt of this order in a separate filed document.

## **I. Plaintiffs' Objections to the Report and Recommendation are Overruled**

### **A. Legal Standard**

On February 5, 2024, Plaintiff filed objections to the Report and Recommendation [Dkt. 92]. A party who timely files specific, written objections to a magistrate judge's Report and Recommendation is entitled to a *de novo* determination of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2)-(3). To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Frivolous, conclusive or general objections need not be considered by the district court." *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (en banc), *overruled on other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1412 (5th Cir. 1996) (en banc). No Defendant has objected to the Report and Recommendation.

### **B. Discussion**

Plaintiff objects to Judge Stetson's Report and Recommendation [Dkt. 74 at 3] claiming all parties has been served, thus all parties who have not answered are in default. Nowhere in the motion for default judgment does Plaintiff make clear which parties Plaintiff believes to be in default. Plaintiff's motion is not, therefore, a proper motion for default judgment. Additionally, after *de novo* review, the Court cannot identify any properly served party to be in default. The Court adopts Judge Stetson's Report and Recommendation [Dkt. 74].

## **II. Conclusion and Order**

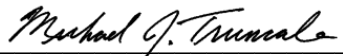
The Court has conducted a *de novo* review of Plaintiffs' objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration,

Plaintiffs' objections [Dkt. 92] are OVERRULED. The Report and Recommendation of the United States Magistrate Judge [Dkt. 74] is ADOPTED. Plaintiff's Motion for Default Judgment [Dkt. 57] is DENIED.

It is further ORDERED that Plaintiff, to the extent he wishes to object to Dkt. 72 and Dkt. 73, to do so in separate and appropriate filings within seven (7) days of receipt of this order, and Plaintiff respond to Judge Stetson's show cause order [Dkt. 79] within seven (7) days of receipt of this order. The Clerk of the Court is ORDERED to attach Dkt. 79 to this order.

IT IS SO ORDERED.

**SIGNED** this 14th day of February, 2024.



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Michael J. Truncala  
United States District Judge